

Update: Criminal Procedure Monograph 7—Probation Revocation (Revised Edition)

7.38 Advice of Right to Appeal or File Application for Leave to Appeal

Insert the following text immediately following the quoted text at the top of page 36:

A defendant may not appeal by right a court's judgment after a contested probation revocation hearing if the defendant pleaded no contest to the offense for which he was sentenced to probation. *People v Perks (On Remand)*, ___ Mich App ___, ___ (2003).

The Michigan Court of Appeals concluded that MCR 6.445(H) inaccurately suggests that a probationer has an appeal of right from a court's judgment following a contested revocation hearing. *Id.* at ___.

The Court of Appeals reviewed the climate in which the Supreme Court amended MCR 6.445(H) and concluded that the rule improperly expands the Court of Appeals' jurisdiction, which is defined by law and may only be modified "as provided by law" pursuant to the constitution. *Perks, supra* at ___. The Court of Appeals also discussed Proposal B, the amendment to Michigan's constitution in which voters agreed that a criminal defendant's opportunity to appeal judgments based on pleas of guilty or nolo contendere should be by leave rather than by right. *Id.* at ___. According to the *Perks* Court:

"[A] probationer does not have a right to appeal under MCL 600.308(2)(d) and 770.3(1)(d) if he or she previously entered a plea to the underlying offense because the judgment of sentence entered following a probation revocation is based upon his or her plea to the underlying conviction. Therefore, MCR 6.445(H) should require a trial court to advise the probationer that he or she has a right to appeal if the underlying conviction occurred as the result of a trial or that he or she has a right to file an application for leave to appeal if the underlying conviction was the result of a plea of guilty or nolo contendere." *Id.* at ___.